

### **REMARKS**

This responds to the Office Action dated December 28, 2004.

Claim 9, 16- 20 are cancelled.

Claims 1-8, 10-15, and 21-24 remain in the application.

Claims 2-4, 7, 8, 10, 11, and 21-23 were allowed in the Office Action of 12/28/04.

Claims 1, 5, 6, 12-20 and 24 were rejected in the previous Office Action.

### **Acknowledgement of Interview**

The undersigned attorney acknowledges the telephone conversation with the Examiner on March 29, 2005, in which the attorney stated that he intended to submit an amendment in the claims of the application that emphasized the rotation of the bird holders about upwardly extending axes. The attorney compared the proposed changes with McGuire et al (4,709,448) to point out that the reference does not have a similar arrangement, in that the holders of the reference rotate about a laterally extending axis and do not function in the same way or achieve the same result as applicant's invention. The examiner acknowledged that the change proposed by the attorney would avoid the reference.

### **Claim Rejections – 35 USC § 102**

Claims 1, 5, 6, 12, 13 and 24 were rejected under § 102(b) as being anticipated by U.S. Patent 4,709,448 to McGuire, et al.

McGuire, et al. does not show the principle of applicant's invention. It functions in a different way and does not provide the same results.

McGuire, et al. shows a rotary transfer apparatus that has a rotary member 20 (Fig. 1) that receives the birds on one side of the rotary member and carries them around to the other side of the rotary member. During this process, the orientation of the bird progressively changes so if the bird enters facing south, it exits facing north. The McGuire, et al. birds remain radially oriented with respect to the central shaft 25 as they pass around the transfer wheel. This is not the principle of applicant's invention. In applicant's invention, if the bird enters the transfer wheel facing south, it exits the transfer wheel facing the same direction, south.

It appears that the examiner has cited McGuire, et al. because the breadth of the claims of the application might include the tilting concept shown in Figs. 6 and 7A of McGuire, et al., whereby the McGuire, et al. birds are tilted up and down about horizontal axes for a completely different purpose, so that the hocks can be cut from the legs of the birds.

Claims 14-16 concern the holder that carries the birds about the transfer wheel. Claims 14-16 were rejected under § 102(b) as being anticipated by U.S. Patent 5,514,033 to Berry.

Berry discloses in Figs. 4C, 5A, 5B, 6A, 6B, and 7 his concept of orienting the legs of the bird as the legs pass through an open ended leg divider and restraint 19. As shown in Fig. 4C, the restraint device 19 is placed above the new, open fronted shackle 19' with the restraint device being located in a stationary, horizontal orientation and with the shackle 19' moving beneath the restraint device so as to receive the legs of the bird.

Fig. 5A shows the restraint device. It is described in Berry's specification as:

With reference to Fig. 4C, it will be appreciated that the restraint device 19 has been sectioned at a position upstream of shackle 19'. Clearly, the point when the bird is transferred from the restraint device to the shackle, the bird's legs will have been separated by device 19 so as to line up exactly with the gaps between the inner and outer leg restraints of the shackle.

In operation, when the birds' legs have been suitably separated and restrained by the array 23-27 as above described, the birds are pulled away from the open topped device [restraint device] by successive open-fronted shackles of the shackle line 20. Fig. 7 shows how the birds are then lifted up and around until they are hanging upside down ready for a subsequent stun and slaughter operation in the following section of the processing plant (not shown). (Col. 3, lines 22-29.)

Looking at Fig. 7, the shackle line 20 moves the shackles 19' beneath the restraint device 19 with both shackle and restraint device being oriented horizontally. **Berry's restraint device 19 of Fig 5A is open ended. Berry's shackle 19' of Fig. 6A is not open ended.** Once the shackle grasps the legs of the bird, the shackle 19 tilts toward a vertical attitude and carries the birds away from the restraint device.

It should be noted that **Berry's shackle 19' does not have open ended accommodation spaces** as clearly shown in Fig. 6A. Indeed, if the accommodation spaces of the shackle were open ended, *the birds would fall out of the shackles when the shackles become vertically oriented in the manner as shown in Fig. 7.*

The accommodation spaces that are identified in the Office Action as 24-27 are not the accommodation spaces of Berry's shackle but of the restraint device. The accommodation spaces 24'-27' of the shackle of Fig. 6A are not open ended. They have only one open end as conventional shackles do. This is described in the Berry specification:

The structure of the open-fronted shackle 19' is best understood from Figs. 4C and 6 and comprises attachment member 23', inner leg restraints 24', 25', and outer leg restraints 26', 27'. *At its trailing end shackle 19' is completed by a downwardly-turned stop bar 28.* (Col. 3, lines 10-14)

Obviously the stop bar 28 shown in Fig. 6A clearly forms a dead end of the accommodation spaces of the Berry shackle.

Not only does the shackle of Berry not meet the claims of the application, it does not function the same way and does not provide the same result. Applicant's hanger 21 has open ended accommodation passages 31 that are endless so that the hock of a bird can be inserted from one side and discharged from the other side of the shackle. This cannot happen in Berry.

Independent claim 14 of the application has been amended:

---said narrow plate and said intermediate support plate including upwardly inclined end portions,  
~~the distance between the accommodation spaces at their one end being different from the distance therebetween at their other end,~~

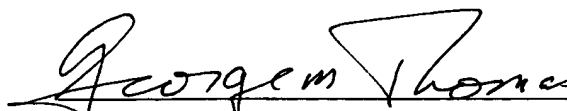
such that the legs of a carcass can be inserted into one of said ends of the accommodation spaces, the carcass suspended by its legs from the holder and carried by the holder to another location, and the legs removed from ~~the said other ends~~ of the accommodation spaces and the upwardly inclined end portions avoid the birds falling from the holder.

Clearly, Berry does not describe a shackle constructed in this way, and his shackle does not work in the same way as applicant's shackle. The birds enter and depart from the wider ends of Berry's shackle.

In the event that there are any claim matters that should be discussed between the Examiner and the undersigned attorney, the Examiner is invited to call by telephone for such a discussion.

Favorable consideration of the application is courteously solicited.

Respectfully submitted,

 4/1/05  
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